



House of Commons Debates

FOURTH SESSION—SIXTH PARLIAMENT.

DEBATE

ON THE

POWER OF DISALLOWANCE.

TUESDAY, 29TH APRIL, 1890.

Mr. BLAKE. Pursuant to the notice which I gave some days ago, I rise to move in amendment:

To leave out all the words after "That" and insert the following:—"it is expedient to provide means whereby, on solemn occasions touching the exercise of the power of disallowance, or of the appellate power as to educational legislation, important questions of law or fact may be referred by the Executive to a high judicial tribunal for hearing and consideration, in such mode that the authorities and parties interested may be represented and that a reasoned opinion may be obtained for the information of the Executive."

At this stage of the Session I shall endeavor to comprise within the briefest possible limits those observations which I have to make in support of this proposition. I would say that recent, current, and imminent events have combined to convince me that it is important in the public interest that this motion should receive attention during this Session, else I should not have propounded it at this time. I propound it, as its language implies, and as, I think, you will observe before I sit down, in no hostile spirit towards the Administration; and its form is one which is not necessarily hostile, but which I have adopted on this occasion, not with any view of precluding an amendment, but because it is the only available method by which I can now hope to bring the matter under your consideration at all. Now, Sir, the federal constitution of Canada specially demands our attention to the legality of its legislative Acts. We have within our borders seven Provincial Legislatures, one Territorial Assembly and this Parliament, all and each with limited powers, all and each hedged in by limitations—with reference to the Provincial Legislatures and the Parliament, as between these two, and with reference to both the Provincial Legislatures and the Parliament, as between them both and the reserved powers of the Imperial Parliament—with limited powers, I say, any excess, or attempted excess of which in legislation is absolutely void. Our several constitutions are partly unwritten and undefined; they are also largely, perhaps, I may say, mainly, written and defined. And so it has happened that we have fallen into the use of the word constitutional in

two very different senses; one, the only sense in which it is used in the mother country, whose constitution, being the growth of customs, precedents, practices and principles, and not being a written instrument, unalterable by the Parliament, Parliament being itself supreme—whose constitution, I say, is a thing elastic, plastic, changing, of the spirit, not of the letter; and so, when we speak, in the English sense, of an Act being constitutional or unconstitutional, we refer to its spirit, we refer to the question whether it is in accord with, or in violation of, the spirit of the constitution. But we have another sense in which we use the word in a sense peculiar to ourselves, or at any rate, distinct from its use in the mother country; we use it also to express an Act in excess of our legal powers. In the first class of cases, however obnoxious may be the Act that we condemn, it is nevertheless indisputably valid; in the second class of cases, however useful we may consider the Act we are discussing, it is null and void. The first class of cases depends on political considerations entirely outside the judicial domain, which is quite unfitted for their disposition; the second class depends upon legal considerations fitted for the judicial domain, and which ought, as far as may be, to be kept within it. Yet, Sir, no Legislature or Executive can, any more than any private individual, act at all without considering, and in a sense deciding for itself, the legality of its acts, and so in some sort, entering upon the judicial department. But not upon the domain of the judicial power; because our opinion that our acts are valid does not make them so; their validity depends upon the decision of the judicial authority, and upon that alone. Now, Sir, the general notion that the executive, the legislative and the judicial departments of government ought to be, so far as practicable, separate and apart, is one held by many of the most eminent constitutionalists as a fundamental principle. There can be no doubt that the absolute union of these departments is neither more nor less than absolute despotism. Unite in one hand, I care not whether it be the hand of an auto-

erat or the hand of a Council, the power of legislation, the power of adjudication, and the power of administration, and you make the most absolute despot that is conceivable. The separation, therefore, of these departments, the degree to which, without over-weakening or over-complicating the action of the machine, you can separate them, marks the degree to which, in this aspect of a constitutional system, you have attained perfection. I do not say that they can be absolutely and always separated. It is not so. Now, my object is to apply these general views, which I have briefly stated, to one important class of public transactions so far as may be found practicable; and that class of public transactions is divided, as you will see by my notice, into two subject-matters, in which the Dominion Executive, itself a political body, has a constitutional duty, the discharge of which involves the interpretation of statutes; and thus the solution of strictly legal questions; and in which also this Parliament, which has the right to advise, to condemn or to approve, has, or may have, duties of its own. I by no means propose to withdraw from the Executive its duty; my object is to aid it in the efficient execution of its duty. I make no attempt at this time to discuss the propriety of these constitutional provisions, or, in any general sense, the executive, the parliamentary or the party action which has tended more or less, to elucidate the generally accepted or the generally opposing views upon these subjects. My only wish is, without discussing how far these provisions are wise, taking them as they are, to facilitate the better working of them. The first of the two classes to which I allude is that in which the proposal comes before the Executive, to disallow an Act of a Provincial Legislature on the ground that that Act is *ultra vires*. If it be so, the Act is void; and I think I may say, that it is now generally agreed that void Acts should not be disallowed, but should be left to the action of the courts. It is, nevertheless, and I think with sound reason, contended, that circumstances of great general inconvenience or prejudice from a Dominion standpoint, and involving difficulty, delay, or the impossibility of a resort to law, may justify the policy of disallowance, even in cases in which the Act is *ultra vires*, and therefore void. In that view there would arise two questions, the question of policy, and the question of legality; because the question of legality leaves untouched the question of policy, which is, "even if the Act be void, shall it be disallowed or no?" The other class to which my motion alludes, is that of the Educational appeal, which arises under section 93 of the Constitutional Act, and under the analogous provision of the Manitoba Constitutional Act. Under these clauses a limited power to make Educational laws is granted to a Province, provided, amongst other things, that nothing therein contained shall prejudicially affect any right, or privilege, with respect to denominational schools which any of the Provinces had by law, or, in the case of Manitoba, by practice, at the Union. There is another class of restrictions, which I do not in terms touch here, but to which, in cases in which an appeal is raised upon them, my observations would equally apply. This limitation upon the power of a Province is made more effectual by a special provision, giving an appeal to the Dominion Executive from any Act or decision of the Provincial Legislature or Author-

ities affecting any right or privilege of the Protestant or Roman Catholic minority in relation to education; and whereby also, in case of the non-execution by the Province of the decision of the Executive, this Parliament may make remedial laws for the purpose of effectuating that decision. Those members who have long been here will well remember the New Brunswick school case, which was agitated for many years; in the course of which agitation I have hoped that some political aspects of that and of analogous questions were finally settled—settled, at all events, for the bulk of the party with which I act, and for the humble individual who is now addressing you. I regard it as settled, for myself at any rate, first of all, that, as a question of policy, there shall be no disallowance of Educational legislation, for the mere reason that, in the opinion of this Parliament, some other or different policy than that which the Province has thought fit to adopt would be a better policy. I hold it to be settled, in the second place, that no Address to the Crown shall be passed by this Parliament asking for a change of the Constitutional Act as affecting any Province, at any rate against the will of that Province, in this particular. And I hold it to be settled, thirdly; indeed it follows obviously from these two propositions, that the only questions which can practically arise within our domain are such as may be raised, by way of appeal, under section 93 and the analogous section of the Manitoba Act. The events which took place in connection with the New Brunswick school case afford, to myself at all events, a strong proof of the expediency of what I now propose. Let me enforce the three propositions which I have stated by a brief reference to the votes upon that occasion. In part those votes were taken when hon. gentlemen opposite were in power, in part they were taken when the Liberal party were in power. The first stage in the transaction occurred when hon. gentlemen opposite were in power; and in May, 1872, I voted with the majority of the House against a motion to regret that the New Brunswick school law had not been disallowed by the Government to which I was opposed; although I was, and expressed myself, of the opinion that some of the changes which had been made by that Provincial law were harsh changes. At the same time, I seconded a motion, which fortunately also prevailed:

"That this House deems it expedient that the opinion of the law officers in England, and if possible of the Judicial Committee of the Privy Council, should be obtained as to the right of the New Brunswick Legislature to make such changes in the school law as deprived Roman Catholics of the privileges which they enjoyed at the Union, in respect of religious education in the common schools, with a view of ascertaining whether the case comes within the terms of sub-section 4 of section 93 of the British North America Act of 1867, which authorised the Parliament of Canada to enact remedial laws for the due execution of the provisions respecting education in the said Act."

At that time, I need hardly remind the House, there was no Supreme Court in existence. The advice of the law officers was obtained, and it was, as it had been on prior, and as I am afraid, if I may judge by a notice on the paper, it has been on subsequent occasions, not perhaps very satisfying; and there was no mode of approach apparently to the Judicial Committee. In the end we had to get up a suit in some way or other, about some assessment or other, in order to

obtain, by a clumsy and expensive process, a judicial decision, not reached for some years afterwards, of the question involved and stated in the motion which I have just read. The second stage of those proceedings arose in 1875, when the present Minister of Inland Revenue (Mr. Costigan), whom I regret not to see here, being then in opposition, gave notice of a motion for an Address to the Crown praying for an alteration in the Constitutional Act as it affected the Province of New Brunswick in this regard. Upon that notice being given, I put upon the Votes and Proceedings notice of an amendment, which I take leave to read as expressing the views I then entertained, and still entertain on that aspect of the question. This was my notice:

"That prior to the Union, New Brunswick had sole and exclusive control over its educational system."

"That under the Union Act, as construed by the Judicial Committee of the Privy Council, such control was reserved to, and has ever since been retained by New Brunswick."

"That New Brunswick has not signified any willingness that the Union Act should be amended in this particular."

"That any encroachment made against the will of New Brunswick, on the powers so reserved, would, by diminishing the security now enjoyed by each Province for the maintenance of its provincial rights, tend to subvert the constitution."

"That whatever may be the opinions of members of this House on the educational policy of any Province, this House deems it inexpedient to address the Crown in favor of any amendment which would, against the will of the Province, encroach on the powers reserved to it in respect to education."

When the motion of the present Minister of Inland Revenue ultimately came on, my hon. friend from the East Riding of York (Mr. Mackenzie), then First Minister, moved the following amendment:—

"That in the opinion of this House, legislation by the Parliament of the United Kingdom, encroaching on any powers reserved to any one of the Provinces by the British North America Act, 1867, would be an infraction of the Provincial Constitution, and that it would be inexpedient and fraught with danger to the autonomy of each of the Provinces, for this House to invite such legislation."

This amendment, for which I voted, was carried, with the addition of an amendment inviting the friendly intervention of the Imperial authorities with the Government of New Brunswick for some change by their own voluntary action; the opinion of the House continuing to be as it had been in the previous Parliament, that the legislation which was the subject of agitation was in some particulars harsh, and might better have been otherwise; but that this was a question for the Province freely to decide. I have, I think, proved my case. Now, Sir, in the exercise of this power of disallowance by the Government, political questions will, or at any rate may, probably, always arise. Questions of policy may present themselves, that is questions of expediency, of convenience, of the public interest, of the spirit of the constitution or of the form of legislation. All these are clearly, exclusively for the executive and legislative, that is for the political departments of the Government. But it is equally clear, that when in order to determine your course you must find whether a particular act is *ultra* or *intra vires*, you are discharging a legal and a judicial function. What do you do? You proceed to interpret the Constitutional Act, and to declare its meaning; you proceed to interpret the Provincial Act under consideration and to declare its meaning; you proceed to compare the two statutes so interpreted and declared; and you proceed, finally, to conclude whether or

not the law conflicts with, or transcends the powers which are conferred upon the Legislature which passed it. Nothing that can be conceived partakes more exclusively of the character of a legal and judicial operation than what I have just now described. Again, when you act on the appellate Educational clauses; as, for example, in the case of Manitoba, the very case which is now in a sense pending, as to whether recent legislation be within the limits of the rights of the Provincial Legislature, and whether any relief is due under the appellate clause to those who claim it, you have a legal question, or rather, in this case, a mixed question of law and of fact; which circumstance it was that induced me to insert the word "fact" in my motion, conscious as I was that it was only on the rarest occasions that any references of that description would be necessary. Yet it seemed to me that, in this particular instance, I was constrained to provide for an emergency which may arise. Now, what is the process to be gone through in order to reach a conclusion? The first involves that very question of fact, or rather a mixed question of law and fact. You have to find whether any class of the population had by law or practice, at the time of the Union, any, and, if so, what right or privilege with respect to denominational schools. Secondly, if so, you have to find whether that right or privilege has been affected, and how it has been affected, by the legislation complained of; and thirdly, if so, you have to find what legislative action is required to redress the wrong. The first two questions at any rate are legal and not at all political. Now, I aver that in the decision of all legal questions, it is important that the political executive should not, more than can be avoided, arrogate to itself judicial powers; and that when, in the discharge of its political duties, it is called upon to deal with legal questions, it ought have the power in cases of solemnity and importance, where it may be thought expedient so to do, to call in aid the judicial department in order to arrive at a correct solution. The decision that an Act is *ultra vires*, and its consequent disallowance by the Executive are incidents peculiar in practice to ourselves. They do not exist in the great example of the Republic to the south of us. It is a most delicate function, and its exercise involves most serious ulterior consequences. The question is by the decision of the Executive finally decided, and the Act is obliterated and annulled. The question whether it was or was not valid is so removed from judicial cognisance for ever. And thus by repeated exercises of the power of disallowance, in respect to repeated provincial legislation, the Province may practically be deprived of that which all the time may be a real right;—a right claimed, which may be a right justly claimed. Thus, one of two limited Governments, of which it may be said in a general sense that the sphere of the jurisdiction of the one is limited by the sphere of the jurisdiction of the other;—one of these two limited Governments, may practically decide the extent of the limits, of what in a sense, is its rival Government. That is a very delicate position. It is a little like the position which a great many very good and wise persons contemplate with grave alarm, as to the pretensions of one church to decide what are the limits of power, as between Church and State,—to decide for itself these limits and thus, if that power be

admitted, to arrogate such rights as it pleases to itself. A decision under such circumstances is almost necessarily a suspected decision. There is a sense in which it is the decision of a party in his own cause. And therefore, for that reason only, if for no other, it should be fortified as far as possible by neutral, dignified and judicial aid. So, in the case of an Educational appeal, analogous results at any rate, may ensue; because here also the decision would bar judicial action, and produce coercive legislation, imposing that decision on the Province; and would thus, according to the opinion of the Dominion Executive and Parliament, and to that alone, end the question. Now, do I say that in all cases the Executive should refer? I do not say so; my motion does not say so; my opinion is not so. I have referred—using language for this purpose which is recorded in the constitutions of some of the most respected States of the Republic—to solemn occasions and to important questions; but my motion is framed in this regard in what I conceive to be the spirit of the British and of our own constitution. It is elastic; it leaves a responsibility to the Executive to decide on the action to be taken in the particular case; it deals with the case as exceptional. My own opinion is, that whenever, in opposition to the continued view of a Provincial Executive and Legislature, it is contemplated by the Dominion Executive to disallow a Provincial Act because it is *ultra vires*, there ought to be a reference; and also that there ought to be a reference in certain cases where the condition of public opinion renders expedient a solution of legal problems, dissociated from those elements of passion and expediency which are, rightly or wrongly, too often attributed to the action of political bodies. And again, I for my part would recommend such a reference in all cases of Educational appeal—cases which necessarily evoke the feelings to which I have alluded, and to one of which, I am frank to say, my present motion is mainly due. Our present powers, Sir, are wholly inadequate for the effectual execution of the project in hand. There is no certainty—there is in ordinary cases rather an improbability—of our being able to reach the Judicial Committee; and as to all the three possible appeals or references, the Judicial Committee of the Privy Council, the Supreme Court, and the Imperial law officers, the machinery is extremely defective. There is no provision for the representation of the different interests; there is no provision for the ascertainment of facts; there is no provision for the reasoned opinion of the tribunal. Now, even where under special provisions on our own Statute-book, the first of these three requisites did exist—as in the case of the Liquor License Act, where we made a special provision for a reference to the Supreme Court, and for the appearance of and argument by opposing parties; as in the case of the Manitoba Railway crossings matter, where under a general law the Railway Committee of the Privy Council referred an important constitutional question to the Supreme Court, with provision, which the law allowed, for the argument by opposing parties—even in these cases, which come nearest to that degree of perfection to which I desire to attain, the results were not satisfactory;—why? Because the remaining requisite did not exist, in such form, at any rate, that it was used. There was no reasoned opinion; no grounds were stated by the tribunal for the conclusion

which it shortly gave in reply to the Executive. The hon. First Minister will recollect expressing his own dissatisfaction with the opinion of the Supreme Court in the liquor license case, on that very ground, and he will remember that that circumstance involved a prolongation of the struggle and further proceedings; until in the end, the question was deemed settled by an argument and a reasoned judgment of the Judicial Committee which had earlier occurred; and by an unreasoned opinion of the same tribunal on appeal from the Supreme Court. I say, the lack of this last requisite deprived those proceedings of their chief value; they obliged us to resort to other methods; they left only as their result the disposition of an isolated case, with no general application, and of no permanent use. It was as if some Delphic oracle had spoken. We could not tell, beyond the limited disposition of the case in hand, what was actually meant, and not always even that. For my own part, I attach little comparative importance to judicial solutions, reached without argument, and announced without reasons. This, Sir, is only common sense. The experience of mankind has established, as the essential ingredients for the attainment of justice between man and man, the opposing arguments of the parties before a tribunal, and the reasoned judgment of that tribunal upon the arguments so addressed to it. The acutest minds are but too apt to err unless so aided in the formation of their judgment, and so checked in the announcement of it. Which of us, I ask, would submit, in any important case of his own, to such a method of reaching a conclusion? And how can we expect that the community at large will submit to such a method in the public cause? Let the opposing views be stated, presented and sifted in public, and in the presence of the parties; so the best materials for consideration will be obtained. Let the conclusions themselves be reasoned out; so will the judgment itself be best tested and sifted, and its soundness ascertained. It may be said that these views, applicable to private causes and to the ordinary transactions of mankind, have less application or none to constitutional questions. I should deny, on reason, any such view; and I refer, in the contrary sense, to a quotation from Bryce's recent book upon the American Constitution, which shows, what one would have expected, that if there be a distinction, it is in favor of the application of these principles to this class of cases. Speaking of the illustrious exponent of the United States constitution, Chief Justice Marshall, that author says:

"Chief Justice Marshall's work of building up and working out the constitution was accomplished not so much by the decisions he gave as by the judgments in which he expounded the principles of these decisions, judgments which, for their philosophical breadth, the luminous exactness of their reasoning, and the fine political sense which pervades them, have never been surpassed and rarely equalled by the most famous jurists of modern Europe or of ancient Rome. Marshall did not forget the duty of a judge to decide nothing more than the suit before him requires, but he was wont to set for the grounds of his decision in such a way as to show how they would fail to be applied in cases not yet arisen."

A noble function, which I wish we could see applied in Canada! Now, for want of this, as I have said, our occasional efforts to obtain light have resulted less satisfactorily than I could wish—sometimes in clumsy, slow, expensive, and but slightly fruitful proceedings; sometimes in absolute

failure; and always with loss, for the want of the adequate provision to which I invite the attention of the House. I, myself, have objected on former occasions to the reference of unargued, abstract questions for an unreasoned opinion. I think it is objectionable. It is better than nothing in some cases; in some cases, I would adopt it if the only resort. I have advised it before, and would advise it again. But, as a rule, I still adhere to that view; and because I adhere to it, I propose a more excellent way. But though some theoretical objections may still remain to the guarded plan which I propose, the main objections are most unquestionably removed by the adoption of these precautions. The balance of advantage is decidedly one way, and that is all that in human affairs we can expect to attain. Now, Sir, our present law provides a power to the Executive to make such a reference; and such a reference may, at this day, be made without any of these precautions, while it cannot be made with them. My proposal, therefore, involves a check and a limitation, as well as an added power. With reference to the theoretical objections to which I have alluded, and which have been pressed very much in the United States—where, however, there is this cardinal difference, that they are not at all called upon to deal with this question of disallowance or of appeal—with reference to the theoretical objections there raised on the question as there presented, Mr. Bryce, in the work to which I have alluded, points out the corresponding disadvantages, even there, of the absence of some such provisions. They are:

"To settle at once and forever a disputed point of constitutional law, would often be a gain both to private citizens and to the organs of the Government. Under the present system, there is no certainty when, if ever, such a point will be settled. Nobody may care to incur the expense and trouble of taking it before the court; and a suit which raises it may be compromised or dropped. When such a question, after, perhaps, the lapse of years, comes before the Supreme Court and is determined, the determination may be different from what the legal profession has expected, may alter that which has been believed to be the law, may shake or overthrow private interests based on views now declared to be erroneous."

But, Sir, besides the great positive gain of obtaining the best guidance, there are other, and in my opinion, not unimportant gains besides. Ours is a popular government; and when burning questions arise inflaming the public mind, when agitation is rife as to the political action of the Executive or the Legislature—which action is to be based on legal questions, obviously beyond the grasp of the people at large;—when the people are on such questions divided by cries of creed and race; then I maintain that a great public good is attainable by the submission of such legal questions to legal tribunals, with all the customary securities for a sound judgment; and whose decisions—passionless and dignified, accepted by each of us as binding in our own affairs, involving fortune, freedom, honor, life itself—are most likely to be accepted by us all in questions of public concern. The great Bill for Local Government in Ireland, introduced by Mr. Gladstone in 1886, and which, despite its defects—and I am amongst those who have always thought they were very serious—is, considering the conditions of its preparation, one of the most wonderful productions of its kind, made provision for the establishment of this principle of reference in this class

of cases. It arranged for a reference, either by the Lord Lieutenant of Ireland at his option, or the English Secretary of State at his, to the Judicial Committee of the Privy Council of all questions of *ultra vires* arising on legislative Bills and Acts of the Irish Legislature, and it provided that the decision should be final. The Legislature of Ontario has passed two general statutes, providing, in the one case, for the institution of declaratory actions—actions for judicial declarations upon such subjects; and in the other, for a reference to the courts of such questions; and in each case with those securities which I am anxious we should provide for ourselves. The hon. the Minister of Justice is at this moment availing himself of the earlier of those Acts, for the purpose of testing before the law courts, a very important constitutional question as to the extent of the Executive power. Several States of the Union have, in their constitutions, taken the power of reference, without these securities. We ourselves, as I have pointed out, have taken the power generally, without these securities. We took it specially in the Liquor License Act, with a portion of these securities; we took it generally in the railway cases, with a portion of these securities. Thus, it is beyond our power to urge any longer the theoretical objection; while by the proposal which I advance, we can minimise those objections, and at the same time advance the practical utility of the procedure. If you grant me a definite issue, a full argument, and a reasoned judgment, in my view the objections almost vanish, while the advantages enormously increase. But, my proposal is by no means radical or revolutionary, compulsory or general. It is but an enabling proposition; it but empowers the Executive to obtain—by a procedure replete with the essential requisites for the production of a sound opinion—the views on legal questions of legal authorities, leaving to the Executive, so aided, the responsibility of final action. I have an absolute confidence that, if my proposal should be declined, the first persons to regret that decision will be hon. gentlemen opposite. My opinion is, that this is a proposal eminently helpful to the Executive of the country at this time; but it is eminently helpful to them, because it is eminently helpful to the good government of this country; and it is in this spirit that I move the amendment which I now submit to the judgment of the House.

Sir JOHN A. MACDONALD. In the first place, I accept in the fullest sense, the assurance of my hon. friend that his motion has not been laid before the House in any spirit of hostility to the Administration of the day. On the contrary, I am grateful to the hon. gentleman for having brought forward this subject in the very careful resolution he has prepared, and still more, for the able speech in which he has enforced the various paragraphs and the main object of that resolution. It is gratifying to know that we have now in the House of Commons of Canada an hon. gentleman who is able to give his time and talents to bringing before the representatives of the people important questions of this kind. When I first read the hon. gentleman's resolution hastily, it occurred to me, as I dare say, it occurred to many hon. gentlemen who hear me now, that it was an advance towards the American system, and proposed to transfer the responsibility of the Ministry of the

day to a judicial tribunal; but on scanning the resolution in its carefully prepared terms, that impression was dissipated, and I saw that the principal object of the resolution, as I read it, is that the questions submitted by the Executive to the judicial tribunal should be enforced, sustained and presented to Parliament, to the public and to the Crown by the fact of this legal decision having been given. As the hon. gentleman has stated, when a question is submitted by the Crown to the courts, the simple answer "yes" or "no" is most unsatisfactory. It is a *pronunciamento* of the court without giving any reason for the decision on the decision which has been given. The proposition in this resolution that the courts could be required by the Executive to hear counsel, to take evidence in questions where facts form a portion of the subject to be decided, the fact that it is provided that the courts can and must give reasons for their answer, is sufficient, in my opinion, whether there was or was not any other excellence in the resolution to warrant this House to adopt it. I am strongly of the opinion that this resolution should meet with the favorable consideration of the House. The only objection really that I see to it is the fear that, the power being so emphatically given to the Crown to insist upon reasons being given the Parliament of Canada, and especially the House of Commons, may be continually pressed and urged to refer Bills, whether passed by the Dominion Parliament or the Provincial Legislatures, to the judicial tribunal. We may have very unimportant questions which we would be urged by certain interests to refer to the court. However, the Government of the day must have force enough to resist any such pressure. That is an evil which is comparatively unimportant when you consider the great advantages of the adoption of this resolution, the principle of it being that power is to be given to the Executive—an enabling power, as the hon. gentleman has truly said—to submit any important question to the court, and specially on these two points—the question of disallowance, and the question which may—and I am afraid will—assume large proportions—the educational question. Whenever the question of disallowance is raised on important matters and the reasons alleged for disallowance are that the Act itself was *ultra vires*, that is, that it was beyond the competence of the Legislature which passed it, I coincide with my hon. friend in believing that the Crown

should have the power of submitting such a question to the courts, and give the opportunity to the authority—be it legislative or executive, which has passed the statute, to appear before such tribunals, and that all parties interested, or that the court should think were interested, should have the opportunity of being heard. Of course my hon. friend (Mr. Blake), in his resolution, has guarded against the supposition that such a decision is binding on the Executive. It is expressly stated—and that is one of the instances which shows that this resolution has been most carefully prepared—that such a decision is only for the information of the Government. The Executive is not relieved from any responsibility because of any answer being given by the tribunal. If the Executive were to be relieved of any such responsibility, I should consider that a fatal blot in the proposition of my hon. friend. I believe in responsible government. I believe in the responsibility of the Executive. But the answer of the tribunal will be simply for the information of the Government. The Government may dissent from that decision, and it may be their duty to do so if they differ from the conclusion to which the court has come. There is another point in regard to which the court must be guarded in the measure which will be introduced—not this Session but I hope next Session—based on this resolution, and that is, that the answer, whatever it may be, should be considered in the nature of a judgment so far as to allow of an appeal to the Judicial Committee of the Privy Council. With these remarks, I will only say further, that I thank the hon. gentleman for having brought this resolution before the House, as I concur with it generally, though holding the right with a free hand to frame the measure which will have to be brought down to Parliament in accordance with it. I do not think there can be any doubt as to the meaning of the motion of my hon. friend. I think it is so explicit in its terms that no questions can arise as to what its meaning is, and, if there were any doubts as to its meaning—there were none in my own mind—those doubts would be removed by the lucid speech of my hon. friend. That speech is of record in *Hansard* and will throw a clear light on the objects and the aims of my hon. friend (Mr. Blake) in introducing the resolution.

Amendment of Mr. Blake agreed to.

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